

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.216 OF 2001

IN

NOTICE OF MOTION NO.2009 OF 1998

IN

SUIT NO.1948 OF 1998

...

Bajaj Electricals Ltd. ...Appellant

v/s.

M/s.Khajanchi Electricals

Pvt.Ltd. ...Respondent

...

Mr.V.R.Dhond with Mr.Manish Saurashtree i/b
Shantilal & Co. for the Appellant.

Mr.D.R.Mehta i/b Dhruve Liladhar & Co. for the
Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 16TH AUGUST, 2007

P.C.:

It is common ground that the judgment of the Supreme Court, which has been relied on by the learned single Judge for making the order impugned in the appeal i.e. the judgment in the case of S.M.Dyechem v/s. Cadbury, 2000(5) SCC 573 has been overruled by the Supreme Court by its judgment in the case of Cadila Health Care Ltd. v/s. Cadila Pharmaceuticals Ltd. 2001 PTC 300 (SC) and therefore, the appeal deserves to be allowed.

. We have also been informed that after the impugned order was passed, the trade-mark of the Plaintiff has also been registered. In this view of the matter, in our opinion, following order would meet the ends of justice.

O R D E R

(i) Order impugned in the Appeal is set aside.
Notice of Motion No.2009 of 1998 stands disposed of.

(ii) The Plaintiff is granted leave to amend the plaint in terms of draft amendment handed in, which is taken on record and marked "X" for identification.

(iii) Amendment to be carried out within two weeks.

(iv) After carrying out the amendment, the Appellant shall be at liberty to take out a fresh Notice of Motion seeking appropriate interim reliefs. In case such a motion is taken out, it shall be considered and decided on its own merits in accordance with law.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)